

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 12

Docket No. MC2013-33

Competitive Product Prices
Express Mail & Priority Mail Contract 12
(MC2013-33)
Negotiated Service Agreement

Docket No. CP2013-44

ORDER ADDING EXPRESS MAIL & PRIORITY MAIL CONTRACT 12
TO THE COMPETITIVE PRODUCT LIST

(Issued February 11, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 12 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 12 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 23, 2013 (Request).

II. BACKGROUND

On January 23, 2013, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Express Mail & Priority Mail Contract 12 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a copy of Governors’ Decision No. 11-6, a contract related to the proposed new product, a proposed change to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On January 24, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴ The Commission’s order included a request for supplemental information concerning the effective date of the contract. *Id.* at 4.

On February 7, 2013, the Postal Service responded to the Commission’s request for supplemental information concerning the effective date of the contract, stating that

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1634, Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 12 to the Competitive Product List and Request for Supplemental Information, January 24, 2013.

the parties have agreed in principle that the effective date of the contract is “one business day following the day on which the Commission issues all necessary regulatory approval.”⁵ The Postal Service states that it expects to file an amendment to the contract reflecting that agreement “within the next week.” Response at 1.

III. COMMENTS

The Public Representative filed comments on January 31, 2013.⁶ No other interested person submitted comments.

The Public Representative states that he has reviewed the contract, the supporting justification, and the financial model and data supporting the Request. *Id.* at 2. Based on that review, he concludes that the contract should be categorized as a competitive product and that the contract should cover its costs in its first year. *Id.* He expresses some concern that the Postal Service provides no data that would allow him to conclude that the contract would cover costs in subsequent years, but notes that the concern is mitigated by terms in the contract providing for annual rate adjustments and by the Commission’s authority to review data relating to the contract as part of its Annual Compliance Determination. *Id.* at 3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative’s comments.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request entail assigning Express Mail & Priority Mail Contract 12 to

⁵ Response of the United States Postal Service to Request for Supplemental Information, February 7, 2013, at 1 (Response). Contemporaneously with its Response, the Postal Service filed a Motion for Late Acceptance of Response to Request for Supplemental Information, February 7, 2013 (Motion for Late Acceptance). That Motion for Late Acceptance is granted.

⁶ Public Representative Comments on Postal Service Request to Add Express Mail & Priority Mail Contract 12 to Competitive Product List, January 31, 2013 (PR Comments).

either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.32(d)-(e). In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Express Mail and Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Express Mail & Priority Mail Contract 12 is appropriately classified as competitive and added to the competitive product list.

Cost considerations. Because Express Mail & Priority Mail Contract 12 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, that the contract meets the applicable statutory and regulatory requirements. Request, Attachment D. The Commission finds that the supporting revenue and cost data are sufficient to conclude that the contract should cover its costs during its first year. The Public Representative raises concerns about the lack of data for subsequent years of the contract. PR Comments at 3. As noted by the Public

Representative, however, the contract includes an annual rate adjustment provision. *Id.*; see also Request, Attachment B at 3. This provision should allow the contract's revenues to cover costs in subsequent years. Thus, the Commission finds that Express Mail & Priority Mail Contract 12 complies with the provisions applicable to rates for competitive products. As part of its Annual Compliance Determination, the Commission will review the contract's financial performance for consistency with 39 U.S.C. § 3633(a).

Effective date amendments. As noted above, the contract as filed lacked an effective date. Ordinarily, the Commission would not conclude its review of a Request if the related contract is less than complete. A limited exception is made here for two reasons. First, the omission does not affect the Commission's analysis that the contract satisfies section 3633(a). Second, the Postal Service represents that the parties have agreed in principle to an effective date and that it expects to file a conforming amendment to the contract "within the next week." Response at 1.

The Postal Service shall file the amendment to the contract reflecting the agreement between the parties no later than February 19, 2013. If the Postal Service fails to file the amendment on or before that date, it shall file an update providing a revised estimate of when it expects to file the amendment and describing the circumstances surrounding the delay. The Postal Service shall file the update no later than February 19, 2013, and weekly thereafter until the amendment is filed. If the amendment contains any terms in addition to or different from the agreement described in the Response, the Commission will notice the amendment for comment and review the amendment to determine whether the amended contract continues to fulfill all statutory and regulatory requirements.

Other considerations. By its terms, the contract expires 5 years from the effective date unless, among other things, either party terminates the agreement with 30 days' written notice to the other party. Request, Attachment B at 11. If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 12 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Express Mail & Priority Mail Contract 12 (MC2013-33 and CP2013-44) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall file an amendment to the contract concerning the effective date of the contract no later than February 19, 2013.
3. The Postal Service shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.
4. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the Agreement.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-33 and CP2013-44. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail & Priority Mail Contract 12

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